

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1467 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

OMKARNATH KAK

Versus

I G PRISON

Appearance:

MR NM KAPADIA for Petitioner

MS. K.N. Valikarimwala, Addl. P.P.for respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 12/12/97

ORAL JUDGEMENT

By way of this Special Criminal Application the petitioner seeks a direction declaring the action of the respondent authorities in not granting benefit of remission, commutation etc. to the petitioner in computing 11 years imprisonment under NDPS Act, 1985 in view of the provisions of Section 32-A of the Act.

The petitioner was arrested in connection with the alleged offence under NDPS Act on 11.1.1988. He was convicted by the judgement of the Sessions Court, Ahmedabad, Court No. 18 in Sessions Case No. 278 of 1988 dated 22.3.1990 under the NDPS Act and sentenced to 10 years rigorous imprisonment and to pay a fine of Rs. 1,00,000/- (Rupees one lakh only) and in default to further undergo rigorous imprisonment for one year.

In para 7 of the petition it is stated that the petitioner has earned 1133 days remission i.e. almost 3 years and 38 days. The petitioner had undergone 8 1/2 years and if the remission as earned by the petitioner is added the petitioner is in jail for more than 11 1/2 years. The petitioner has not paid the fine and therefore even if one year's sentence of rigorous imprisonment is added, it comes to 11 years. Thus, the petitioner had already undergone the sentence awarded and his further detention is illegal.

Section 32A of the NDPS Act came into operation in the NDPS Act vide Act No. 2 of 1989 with effect from 29.5.1989 which puts restriction on commutation, remission or suspension of sentence awarded under the NDPS Act. It is contended by the learned counsel that the provisions of Section 32A of the NDPS Act cannot be attracted in the present case as the same provisions were not available at the time of commission of offence. So far as this contention is concerned, the controversy has been settled by the decision of this court in the case of GUPTA LAJJARAM RAMSWAROOP VS. I.G. PRISON reported in 1997(2) G.L.H. 625 wherein this court held that Section 32A of the NDPS Act will not apply to the case where the sentence is awarded before 29.5.1989. In the present case the sentence has been awarded by judgement dated 22.3.1990 and therefore in my view the authorities have rightly applied the provisions of Section 32A of the NDPS Act. It is contended by the learned counsel that the said judgement is per incuriam as the mandate as contained in Article 21 has not been taken into consideration. In my view, there is no substance in this contention. In Gupta Lajjaram's case (supra) the said contention has been considered in para 5 of the judgement.

In view of the aforesaid, I find no merit in this Special Criminal Application and the same is accordingly rejected. Rule is discharged.

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